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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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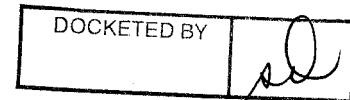
WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

IN THE MATTER OF THE APPLICATION OF
CITIZENS COMMUNICATIONS COMPANY,
AGUA FRIA DIVISION, FOR (1) AN EXTENSION
OF THE AREA COVERED BY ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY, (2) APPROVAL OF THE
CATERPILLAR PROPERTY WATER/WASTE-
WATER AGREEMENT, (3) APPROVAL OF THE
TARIFF FOR THE WATER FACILITIES HOOK-
UP FEE, (4) APPROVAL OF THE TARIFF FOR
GENERAL NON-POTABLE WATER SERVICE,
AND (5) APPROVAL OF RULE NO. 12
APPLICABLE TO NON-POTABLE WATER
SERVICE.

DOCKET NO. W-01032B-00-1043

Arizona Corporation Commission
DOCKETED

OCT 19 2001



IN THE MATTER OF THE APPLICATION OF
CITIZENS WATER SERVICES COMPANY OF
ARIZONA FOR (1) AN EXTENSION OF THE
AREA COVERED BY ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY FOR WASTEWATER SERVICE, (2)
APPROVAL OF THE CATERPILLAR PROPERTY
WATER/WASTE-WATER AGREEMENT, AND
(3) APPROVAL OF THE TARIFF FOR THE
WASTEWATER FACILITIES HOOK-UP FEE.

DOCKET NO. SW-03454A-00-1043

**COMMISSION STAFF'S
SUPPLEMENTAL BRIEF**

The Arizona Corporation Commission staff ("Staff") hereby files its supplemental brief in response to the administrative law judge's October 5, 2001 Procedural Order. In that order, the Hearing Division identified four issues for the parties to address: 1) the percentages of groundwater, effluent, and Central Arizona Project ("CAP") water that will be used to irrigate the proposed golf courses and other turf areas in the proposed development; 2) a more definitive time table for construction of those components, i.e., the approximate volumes and/or ratios of groundwater,

1 effluent, and CAP water that will be used at various phases of the project; 3) how the Commission
2 should consider the “need” for a project when evaluating a request for extension of a CC&N; and 4)
3 whether the Commission may consider the issue of “urban sprawl” when evaluating the
4 appropriateness of a request for extension of a CC&N. This brief will discuss issues three and four;
5 because Staff does not have direct access to the information requested in issues one and two; Staff
6 will not address them.

7
8 **I. In evaluating a request for extension of a CC&N, how should the Commission consider
the “need” for the project?**

9 The Commission’s authority to issue CC&Ns is governed by statute. See A.R.S. §§ 40-281-
10 282. The Commission’s authority pursuant to these statutes is broad:

11
12 [t]he commission may . . . issue the certificate or refuse to issue it, or
13 . . . and may attach to the exercise of rights granted by the certificate terms
and conditions it deems that the public convenience and necessity require.

14
15 A.R.S. § 40-282.B. Ultimately, the Commission awards CC&Ns to utilities based upon the public
16 interest. See James P. Paul Water Co. v. Arizona Corp. Comm’n, 137 Ariz. 426, 671 P.2d 404 (1983)
17 (noting that “[t]he public interest is the controlling factor in decisions concerning service of water by
18 water companies”); Davis v. Corp. Comm’n, 96 Ariz. 215, 393 P.2d 909 (1964) (noting that CC&Ns
19 “can only be acquired . . . by affirmative showing that issuance thereof would best serve the public
20 interest”).

21 In light of this public interest standard, there is certainly room for the Commission to consider
22 both the need for the service and the need for the overall project. For example, if the evidence of
23 record shows that the area is unlikely to develop, the Commission could reasonably conclude that
24 there is no need for utility service. If there is no demonstrated need for utility service, then denying
25 an application for a CC&N may well serve the public interest. In the absence of a customer
26 requesting service or, alternatively, in the absence of a developer with definite plans to build, it may
27 be premature to grant or extend a CC&N.

1 But there may be situations in which the Commission's consideration of "need" could lead it
2 outside the scope of its authority. If, for example, the Commission were to deny a CC&N based upon
3 the conclusion that a development is not "needed," i.e., Arizona already has too many white stucco
4 houses or strip malls, then the Commission may be engaging in land use planning, instead of utility
5 regulation. The Commission's jurisdiction is related to public service corporations. See Ariz. Const.
6 art. XV, § 2. Although the Commission has broad discretion to effect public policy goals related to
7 utility regulation, it likely does not have the authority to develop public policies to control land
8 development, unless those policies are directly related to utility regulation. Accordingly, the
9 Commission should temper its application of the public interest standard with an awareness of the
10 nature of its jurisdiction.

11 The Commission, when evaluating a CC&N, has broad discretion to consider virtually any
12 evidence that relates to the public interest. Nonetheless, when acting on that evidence, the
13 Commission should focus upon its primary purpose: the regulation of public service corporations. In
14 general, when evaluating "need," the Commission's primary focus should be upon the "need" for the
15 utility service, not the "need" for the development.

16
17 **II. How should the Commission consider the issue of "urban sprawl" when evaluating the
appropriateness of a request for extension of a CC&N?**

18 In general, when the Commission evaluates an application for a CC&N, it should focus its
19 analysis upon the public service corporation, not upon the developer. Some parties may argue that an
20 issue such as "urban sprawl" is entirely outside the Commission's jurisdiction, because it relates to
21 the nature of the development, not to the nature of utility service. By contrast, Staff believes that the
22 relevance of any particular issue, including "urban sprawl," will depend on the facts of the case.

23 For example, if the Commission's consideration of "urban sprawl" focuses solely upon the
24 merits of "urban sprawl" in and of itself, i.e., whether we want our cities to be compact rather than
25 sprawling, then the Commission may be overstepping its authority. But if the evidence presented to
26 the Commission demonstrates that the characteristics of "urban sprawl" are potentially detrimental to
27 the utility, either financially or operationally, or to its ratepayers, then the Commission has the
28 authority to craft an appropriate remedy.

1 Certainly, there are instances in which the Commission may assert a kind of ancillary
2 jurisdiction over entities that are not public service corporations. See Arizona Corp. Comm'n v. State
3 ex rel. Woods, 171 Ariz. 286, 297 P.2d 807, 818 (1992) (holding that the Commission may regulate
4 the formation of utility affiliates); A.A.C. R14-2-206.C (requiring customers to grant easements to
5 utilities to ensure proper service connections).¹ These examples illustrate that the Commission's
6 authority is necessarily quite broad, at times extending even to entities that are not public service
7 corporations. Nonetheless, these examples also illustrate that this sort of extended jurisdiction is
8 most sustainable when it is directly related to the goals and policies of utility regulation.

9 In summary, the degree to which the Commission may consider "urban sprawl" is case-
10 specific. In instances where the issue is related to the utility's operations or finances, the
11 Commission may fashion appropriate conditions and/or orders to address it. If, by contrast, the
12 Commission were to debate the merits of "urban sprawl" in an isolated way, separate and apart from
13 its effects upon the utility or its service, the resulting order may be vulnerable on appeal.

14 15 **III. Questions Related to How the Water will be Used.**

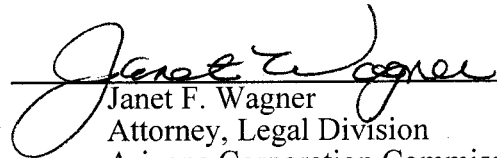
16 The procedural order in this matter asks for various information related to water use.
17 Obviously, Staff is not the entity responsible for planning or building this project; accordingly, Staff
18 does not have access to this data. In order to acquire this information, Staff would have to issue
19 additional discovery requests. Although Staff is not opposed to doing so, we note that the company
20 will likely be filing its own brief in this matter, and presumably will provide this information directly
21 to the Commission.

22
23
24 ¹ See also A.A.C. R14-2-203.A.3 ("A utility may require a new applicant for service to appear at the utility's designated
25 place of business to produce proof of identity and sign the utility's application form."); A.A.C. R14-2-206.C ("Each
26 customer shall grant adequate easement and right-of-way satisfactory to the utility to ensure that customer's proper
27 service connection."); A.A.C. R14-2-208.A.3 ("The Utility Distribution Company may, at its option, refuse service until
28 the customer has obtained all required permits and inspections indicating that the customer's facilities comply with local
construction and safety standards."); A.A.C. R14-2-208.B.1 ("Each customer shall be responsible for maintaining all
customer facilities on the customer's side of the point of delivery in safe operating condition."); A.A.C. R14-2-108.B.2
("Each customer shall be responsible for safeguarding all utility property installed in or on the customer's premises for
the purpose of supplying utility service to that customer."); A.A.C. R14-2-208.B.5 ("Each customer shall be responsible
for notifying the utility of any equipment failure identified in the utility's equipment.").

1 **IV. Conclusion.**

2 The relevance of any particular issue depends upon the facts of the case. However the
3 Commission chooses to evaluate the "need" for a project, that evaluation should stem from a fully
4 developed administrative record. Such a record allows the Commission to evaluate "need" in the
5 context of the regulation of the utility.

6 Respectfully submitted this 19th day of October, 2001.

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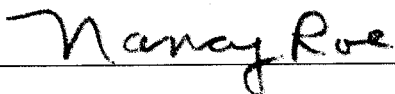
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